waiver, estop the insurer from avoiding a Standard Form fire insurance policy. *Roper et al* v. *National Fire Ins. Co. of Hartford, et al,* (N. C. 1912) 76 S. E. 869.

Upon the single ground that the agent, as an interested creditor, was engaged in a transaction adverse to his principal, and his knowledge was therefore not imputable to the insurer, the case is well decided. *Shaffer* v. *Milwaukee Mech. Ins. Co.,* 17 Ind. App. 204, 46 N. E. 557; 31 Cyc. 1595. But the court reasons further that as the attempted proof of waiver was by parol it was incompetent because the legislature in enacting the Standard Form has declared that waivers shall be only by indorsement. Applied to strict waivers that is correct. However, there is weighty authority that if an agent, with knowledge of a ground of forfeiture, delivers the policy and receives the premium, it would be virtually a fraud on the insured to permit the insurer to claim the forfeiture. To avoid this many courts allow parol proof, as an estoppel *in pais,* in cases of Standard Policies. *Welch* v. *Fire Ass'n.,* 120 Wis. 456, 98 N. W. 227; *N. Y. Assn.* v. *Westchester Ins. Co.,* 110 App. Div. 760, affirmed 189 N. Y. 525; *Leisen* v. *St. R. F. & M. Ins. Co.,* 20 N. D. 316, 127 N. W. 837, 30 L. R. A. N. S. 539; *Fosmark* v. *Equi. Fire Ass'n., 23* S. D. 102, 120 N. W. 777. Aside from the Standard Form feature of the case, the question is suggested whether, on the theory of estoppel, those conditions which affect the inception of the policy can be proved by parol to be inoperative. The overwhelming weight of authority admits such proof. *Peoples Fire Ins. Co.* v. *Goyne,* 79 Ark. 315, 96 S. W. 365, 16 L. R. A. N. S. 1180, 9 Ann. Cas. 373; *Beebe* v. *Ins. Co.,* 93 Mich. 514, 53 N. W. 818, *32* Am. St. Rep. 519, 18 L. R. A. 481; *Atlanta Home Ins. Co.* v. *Smith,* 136 Ga. 592, 71 S. E. 902; *Wilson* v. *Germania Ins. Co.,* 140 Ky. 642, 131 S. W. 785; *Medley* v. *German Alliance Ins. Co.,* 55 W. Va. 342, 47 S. E. 101, 2 Ann. Cas 99. See exhaustive citations in *Western Nat'l. Ins. Co.* v. *Marsh,* (Okla.) 125 Pac. 1094. The United States Supreme Court reached a contrary conclusion in *Northern Assur. Co. v. Grand View Bldg. Ass'n.,* 183 U. S. 308, 362, and similar holdings obtain in Massachusetts, New Jersey, and Rhode Island, and the territorial courts. Recent state decisions cited supra with deference have refused to follow the Supreme Court. It is significant that in *Western Nat'l. Ins. Co.* v. *Marsh,* the Oklahoma court abandoned the Federal rule as to all contracts made since statehood. For a discussion of the general principles involved, see 8 Mich. L. Rev. 664.

Master and Servant—What is a "Defect" in Employer's Plant?—Plaintiff was employed as porter or care-taker in defendant's place of business. Part of plaintiff's duties consisted in cleaning lighting fixtures which were situated about twelve feet from the floor. The floor of the room was covered with tiling which at times was slippery. To enable plaintiff to reach the fixtures defendant furnished him with an extension ladder and instructed him to use it when engaged in the discharge of his duties. There was nothing at either end of the ladder to fasten the same to or to prevent it from slipping. The plaintiff while discharging his duty in a careful manner was injured by the slipping of the ladder. *Held* that such a ladder, under the cir-

cumstances, was a "defect in the plant" of the employer within CONSOL. LAWS ch. 31 (Laws 1909 ch. 36) §§ 200-204 as amended by Laws of 1910 ch. 352, defining the liability of an employer for injuries to an employee. *Lipstein* v. *Provident Loan Society of New York,* 139 N. Y. Supp. 799.

The employer's liability acts in New York and in several other states follow closely the language of the English act of 1880. In defining "defect" under this act the courts have said, "The EMPLOYER'S LIABILITY ACT 1880, which gives a workingman the right of action against his employer for personal injury by reason of any defect in the condition of the plant used in the business of the employer, applies to a case where the plant is unfit for the purpose for which it is used though no part of it is shown to be unsound", *Cripps* v. *Judge,* 53 L. J. Q. B. 517, 13 Q. B. D. 583, 51 L. T. 182, and "A defect in the condition of the machinery or plant of the employer within the EMPLOYERS LIABILITY ACT 1880 includes unsuitability of the machinery for the purpose for which it is used and is not confined to cases where the machinery has become defective." *Heske* v. *Samuelson,* 53 L. J. Q. B. 45, 12 Q. B. D. 30; 49 L. T. 474. In this country the courts have said "It follows therefore that whenever there is such unsuitableness for the work intended to be done or actually done, the liability contemplated by the statutes arises, although the appliance is perfect of its kind and in good repair and suitable for other kinds of work. *Geloneck* v. *Dean Steam Pump Co.,* 165 Mass. 202, 43 N. E. 85. The court in the principal case in holding the plant was defective because the ladder was unsuitable for the work being done, although a perfect ladder of its kind, followed the unbroken line of authority as to what constitutes a defective plant.

MUNICIPAL CORPORATIONS—STREET RAILWAY'S OBLIGATION TO REPAVE.—The franchise obligation of the street railway company was to keep the pavement "in good order and repair", for a certain distance beyond its tracks. The city repaved the rest of the street with a material different from that previously used and which then stood in good condition upon the part of the streets the railway was bound to care for. *Held,* that the railway company was obliged to lay the new pavement. *City of Danville* v. *Danville Ry. and Electric Co.,* (Va. 1913) 76 S. E. 913.

In the absence of a provision to such effect in the franchise, a street railway is not bound to pave or repave between or beyond its tracks. *Western Pav. and Supply Co.* v. *Citizens St. Ry. Co.,* 128 Ind. 525, 10 L. R. A. 770; *City of Williamsport* v. *Williamsport Pass. Ry. Co.,* 203 Pa. 1, 52 Atl. 51. The franchise obligation to keep "in good repair and condition" requires the company to pave on a street hitherto unpaved, when the city undertakes to pave the rest of the street. *Columbus St. Ry. and Elec. Light Co.* v. *City of Columbus,* 43 Ind. App. 265, 86 N. E. 83. That the obligation "to keep in good order and repair" requires the laying of a *different* pavement when the city lays such pavement on the rest of the street was held in *Mayor* v. *Harlem Bridge M. and F. Ry. Co.,* 186 N. Y. 304, 78 N. E. 1072; *Philadelphia* v. *Ridge Ave.,* 143 Pa. 444, 22 Atl. 695; *Philadelphia* v. *Thirteenth, etc., Ry. Co.,* 169 Pa. 269, 33 Atl. 126. But when the requirement was "to keep in